Unprecedented Intensification for Urban (Tier 1) Authorities

The Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (**Amendment**) is intended to increase housing supply within the residential zones of New Zealand's largest urban areas by introducing new medium density residential standards and speeding up the implementation of the existing National Policy Statement on Urban Development 2020 (**NPS-UD**).

The intensification requirements are unprecedented in New Zealand planning law, which has traditionally allowed local communities to set their own rules for 'bulk and location' standards. In most residential zones for Tier 1 areas, the single house zone will now, in effect, be replaced by new planning standards providing for 11 metre high or 3 storey residential buildings, and requiring buildings of at least 6 stories within a walkable catchment of rapid transit stops, and the edge of metropolitan zones and city centre zones.

What is the new Intensification Planning Process?

By 20 August 2022, 'Tier 1' Councils[1] are required to introduce changes into district and city plans under a new intensification planning process.

Tier 1 Councils must adopt a new intensification planning instrument (**IPI**) using a new process that replaces the 'standard-track' plan change process.[2] This requires Councils to implement the intensification required by the NPS-UD and the new medium density residential standards, unless a 'qualifying matter' applies, with the following key steps:

a. Use the intensification planning process to notify an intensification planning instrument, by a plan change that will:
    - incorporate new medium density residential standards, and
    - remove any existing density standards contrary to the new medium density residential standards,
    - give effect to the intensification required by the NPS-UD:
        - maximise development capacity in city centre zones.
        - allow at least 6 storey buildings within a walkable distance from:
            - any existing or planned rapid transit stops,
            - the edge of city centre zones, and
            - the edge of metropolitan centre zones.
        - allow higher density buildings in other areas to match the level of demand for housing or the level of accessibility to jobs and services in the area, whichever is greater.

[1] Also 'Tier 2' Councils if the area is experiencing acute housing need and directed by an Order in Council.
[2] Schedule 1 of Resource Management Act 1991 (RMA).

Unprecedented Intensification for Urban (Tier 1) Authorities

b. Abolish minimum parking standards within Tier 1 areas (by 20 February 2022).

An independent hearings panel will hear submissions on the intensification planning instrument and make recommendations to the Council.

If the Council agrees with the hearing panel's recommendations, it notifies the decision. If the Council disagrees with the hearing panel's recommendations, the Minister for the Environment makes the final decision. There is no right of appeal to the Environment Court.

What are Tier 1 urban areas?

Tier 1 Urban Areas	Tier 1 Councils
Auckland	Auckland Council
Hamilton	Hamilton City Council, Waikato District Council, Waipā District Council, Waikato Regional Council
Tauranga	Tauranga City Council, Western Bay of Plenty District Council, Bay of Plenty Regional Council
Wellington	Wellington City Council, Porirua City Council, Hutt City Council, Upper Hutt City Council, Kāpiti Coast District Council, Wellington Regional Council
Christchurch	Christchurch City Council, Selwyn District Council, Waimakariri District Council, Canterbury Regional Council

The Government announced on 15 March 2022 that Rotorua Lakes Council is to join the Tier 1 Councils.

What residential zones will this apply to?

The new intensification planning instrument is to apply to all current and future residential zones in Tier 1 urban areas, but will not apply to:[3]

- a large lot residential zone[4] and settlement zone[5];
- an area that the 2018 census recorded as having a resident population of less than 5,000, unless the Council intends this area to become an urban area; or
- an offshore island.

[3] See section 77G and definition of 'relevant residential zone' under Section 2 of RMA.

[4] A large lot residential zone refers to an area predominantly used for residential activities and buildings such as detached houses on lots larger than those of low density residential and general residential zones, and where there are particular landscape characteristics, physical limitations or other constraints to more intensive development (National Planning Standards 2019, p 36).

[5] A settlement zone refers to areas predominantly for a cluster of residential, commercial, light industrial and/or community activities that are in rural areas or coastal environments (National Planning Standards 2019, p 37).

Unprecedented Intensification for Urban (Tier 1) Authorities

What are the new medium density residential standards?

Tier 1 district plans must permit housing that at least meets the medium density residential standards shown in the table below:[6]

Number of residential units per site	Up to 3 units
Height	Up to 11m high + an additional 1m for a qualifying pitched roof
Height in relation to boundary	Up to 4m high + 60° recession plane
Setbacks	Minimum of 1.5m to front yard, 1m to side and rear
Building coverage	Up to 50%
Landscaped area	20% minimum landscaped area
Outdoor living space (one per unit)	Minimum of 20m^2 for ground floor houses (3m dimension); 8m^2 for houses without ground floor (1.8m dimension)
Outlook space (per unit)	Minimum of 4m x 4m space from living room; all other rooms 1m x 1m
Windows to street	Minimum of 20% of street-facing façade must be glazed

Developments that meet the standards above will not require a resource consent.

When do the new medium density residential standards apply?

The new medium density residential standards will have immediate legal effect from the date of notification (meaning in most cases they immediately override existing plan provisions), unless:

- a qualifying matter applies,
- the Council has proposed more permissive density standards, or
- a new residential zone is being created.[7]

Can Councils adopt lower intensification?

Councils may make the medium density residential standards and relevant height or density requirements less enabling of development (i.e., lower intensification) in an area within a relevant residential zone only to the extent necessary to accommodate one or more qualifying matters.[8]

[6] Schedule 3A Part 2 of RMA.
[7] Section 86BA of RMA.
[8] Section 77I of RMA.

Unprecedented Intensification for Urban (Tier 1) Authorities

What are qualifying matters?

Qualifying matters include:[9]

- a matter of national importance that decision makers are required to recognise and provide for under section 6 of the RMA (e.g., preservation of the natural character of the coastal environment, natural hazards or historic heritage, etc.);
- a matter to give effect to a national policy statement (other than the NPS-UD or the New Zealand Coastal Policy Statement 2010);
- a matter required for the purpose of ensuring the safe or efficient operation of national significant infrastructure;
- open space provided for public use, but only in relation to land that is open space;
- the need to give effect to a designation or heritage order, but only in relation to land that is subject to the designation or heritage order;
- a matter necessary to implement, or to ensure consistency with, iwi participation legislation;
- the requirement in the NPS-UD to provide sufficient business land suitable for low density use, to meet expected demand;
- any other matter that makes higher density, as provided for by the medium density residential standards or the NPS-UD intensification policies, inappropriate in an area, but only if an evaluation report is completed.

Councils must complete an evaluation report to demonstrate why they consider the relevant area is subject to a qualifying matter and justify that view (e.g., why the qualify matter is incompatible with the level of development permitted by the medium density residential standards or as provided for by the NPS-UD).[10]

Can Councils adopt higher intensification?

Yes, Councils do not need to amend or remove existing provisions that allow higher intensification from their district plans. Councils may also enable higher intensification by having more permissive density standards as long as it regulates the same effect as the new medium density residential standards.[11]

[9] Section 77I of RMA.

[10] Section 77J(3) of RMA.

[11] Section 77G(7) and 77H of RMA.

Unprecedented Intensification for Urban (Tier 1) Authorities

What are the notification requirements for developments done under this process?

The Amendment will restrict notification of applications for resource consents where more than 3 units are proposed or the units do not comply with the medium density residential standards (MDRS). The notification requirements[12] are set out in the table below:

Type of Development	Is notification required?
1 to 3 residential units that do not comply with MDRS	▪ Must not be publicly notified. ▪ However, written approvals from neighbours or limited notification may be required.
4 or more residential units that comply with MDRS	▪ Must not be publicly or limited notified. ▪ To be processed on a non-notified basis without written approvals from neighbours.
4 or more residential units that do not comply with MDRS	▪ Current RMA notification tests apply (applications may be publicly or limited notified).

If public or limited notification of an application for resource consent is required, the usual process for submissions apply.[13] In general, any person can make a submission if an application is publicly notified, but only a person identified as being adversely affected can make submissions for limited notified applications. There is no ability to make a submission for non-notified applications.

Who can make submissions on the Council's intensification planning instrument?

Once the Council's proposed intensification planning instrument is publicly notified, any person can make a submission. Further submissions can also be made by a person representing a relevant aspect of the public interest, a person that has an interest in the proposed plan greater than the interest of the general public, or the Council itself.[14]

What must the independent hearings panel do after the intensification planning instrument has been notified?

The hearing panel must make recommendations to the Council on the intensification planning instrument, which can be outside the scope of submissions received.[15]

[12] Schedule 3A Clause 5.
[13] Sections 96 to 98 of RMA.
[14] Schedule 1 clause 6 of RMA.
[15] Schedule 1 clause 99 of RMA.

Unprecedented Intensification for Urban (Tier 1) Authorities

What if the independent hearings panel's recommendations are rejected by the Council?

The Council is the primary decision maker on the intensification planning instrument, but the Minister for the Environment becomes the decision maker on any recommendations that the Council chooses not to adopt. If required, the Minister can decide to accept the recommendations or make alternative decisions.

Is there a right of appeal to the Environment Court or other rights to challenge?

There is no right of appeal to the Environment Court. However, rights of judicial review to the High Court are preserved.[16]

Do the new medium density residential standards affect existing resource consent applications?

The new medium density residential standards will not apply to applications unless and until the new density standards are notified and have immediate legal effect.[17]

How many additional houses are expected to be built because of the Amendment?

According to analysis by PwC, an additional 48,200 to 105,500 dwellings are expected to be built over the next 5 to 8 years. The expected number of additional dwellings in each Tier 1 urban area is shown in the table below.[18]

Tier 1 Urban Area	Five-to-Eight-Year Expected Range of Additional Dwellings
Auckland	27,900 to 53,700
Hamilton	3,400 to 12,200
Tauranga	3,800 to 8,500
Wellington	6,500 to 14,000
Christchurch	6,500 to 17,200
Total	**48,200 to 105,500**

[16] Schedule 1 clauses 107 to 108 of RMA.

[17] Section 77M(9) of RMA.

[18] PwC Cost-Benefit Analysis of proposed Medium Density Residential Standards (January 2022), p 13.

Unprecedented Intensification for Urban (Tier 1) Authorities

What are some foreseeable problems?

Submissions to the intensification planning instrument (due by 20 August 2022) are likely to focus on the application of any relevant qualifying matters, and the Council's evaluation of the qualifying matters.

A practical problem arises because the new intensification planning instrument will have immediate legal effect if it meets the relevant criteria.[19] This creates a foreseeable problem, as observed by commentators, that when the intensification planning instrument is notified (which bring the medium density residential standards into immediate legal effect) development could begin construction as a permitted activity on residential sites identified for intensification. However, it could be determined later during the hearing of submissions by the independent hearings panel that a qualifying matter applies. If this happens, it has been suggested that the development could be considered to have existing use rights which might preclude any submissions to make changes to the plans to accommodate the qualifying matter.[20] It is unsatisfactory that this scenario has not been clearly provided for in the Amendment.

There are also likely to be practical issues around local infrastructure capacity, and whether any increased capacity is capable of being given effect to (whether due to the local infrastructure or application of restrictive covenants or some other constraint). The qualifying matters only apply to 'ensuring the safe or efficient operation of nationally significant infrastructure',[21] so local infrastructure constraints will not of themselves amount to a qualifying matter unless some other qualifying matter applies.

Key documents

For more information, these are key documents in relation to the intensification provisions:

- Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021
- National Policy Statement on Urban Development 2020 (https://environment.govt.nz/assets/Publications/Files/AA-Gazetted-NPSUD-17.07.2020-pdf.pdf)
- Understanding and implementing intensification provisions for the National Policy Statement on Urban Development (1 September 2020) (https://environment.govt.nz/assets/Publications/Files/Understanding-and-implementing-intensification-provisions-for-NPS-UD.pdf)

[19] Section 86BA of RMA.

[20] Helen Andrews, "Legislation changes giveth – and potentially still taketh away", The Property Lawyer 22(3), p 25-27.

[21] Section 77I(e) RMA.